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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,563	11/19/2003	Donald J. Dalton	81901-4000	5048
28765	7590	02/10/2005	EXAMINER	
WINSTON & STRAWN PATENT DEPARTMENT 1400 L STREET, N.W. WASHINGTON, DC 20005-3502			DOUGLAS, STEVEN O	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/715,563	Applicant(s) DALTON ET AL.	
	Examiner Steven O. Douglas	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-9,14,16,17 and 19-21 is/are rejected.
- 7) ☒ Claim(s) 2,10-13,15 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11192003</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 14, clear and proper antecedent basis for the "first transport mechanism" (line 1) and the "second transport mechanism" (line 3) should be defined.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,4-8,16,17,19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balsamico'523 et al. in view of Ricciardi et al.

The Balsamico et al. reference discloses an apparatus for making ice and filling bags for the made ice comprising a feed screw conveyor 36 in communication with a device that makes ice (i.e. which would include an implied water source), a first holding vessel 38, an ice transport device 40 (i.e. a screw conveyor) that further transport ice to a second holding vessel 12 which has an associated level sensor 42 (i.e. the second holding vessel is horizontally disposed with respect to the first vessel), a bag holding cassette 26, a bag 24 and a bag opener (i.e. blower fan 28), wherein after the bag is filled it is closed and transferred to an off-loading conveyor (not shown).

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In regard to claims 16,17,19 and 21, the method as claimed would be inherent during normal use and operation of the device.

However, the Balsamico et al. reference fails to disclose a weighing device. The Ricciardi et al. reference discloses another dispenser with an associated bin that has a level sensing arrangement that includes a weighing device 40. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the level sensing arrangement as, for example, shown by Ricciardi et al. reference for the level sensing of Balsamico et al., wherein so doing would amount to the mere substitution of functional equivalent level sensing arrangement for another.

In regard to claim 21, the Balsamico et al. reference fails to disclose a bag filling time of between 4 and 20 seconds. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have a bag filling time of between 4 and 20 seconds, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Balsamico'523 et al. in view of Ricciardi et al. as applied to claim 1 above, and further in view of Kendt'960 et al.

The Balsamico et al. reference discloses an ice dispenser (supra) that the vessels are insulated, but does not disclose the vessels as being chilled. The Kendt discloses another dispenser having an insulated vessel 12 for storing ice that is chilled by cold plate 38. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made

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to modify the vessels of Balsamico et al. to be chilled in view of the implicate teachings of the Kendt et al. reference to maintain the ice in frozen form.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Balsamico'523 et al. in view of Ricciardi et al. as applied to claim 1 above, and further in view of Sutherlin.

The Balsamico et al. reference discloses an ice bag dispenser (supra), but does not disclose the off-loading conveyor as being an angled surface. The Sutherlin reference discloses another bag dispensing having an off-loading conveyor comprising an angled surface 34 to facilitate the off-loading of bags. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Balsamico et al. device by employing an angled surface-type off loading conveyor in view of the teachings of the Sutherlin reference to facilitate the off-loading of the filled bags.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Balsamico'523 et al. in view of Ricciardi et al. as applied to claim 1 above, and further in view of Bussey, III et al.

The Balsamico et al. reference discloses an ice bag dispenser (supra), but does not stapling or tying the open end of the filled bags. The Bussey, III et al. reference discloses another bag dispenser that staples the open end of the filled bags. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a means for stapling the open end of the filled bags in view of the teachings of the Bussey, III et al. reference facilitate the closing of the filled bags.

Conclusion

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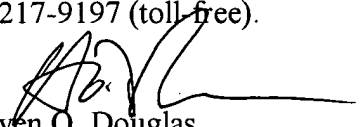
Claim 14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 2,10-13,15 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven O. Douglas whose telephone number is (571) 272-4885. The examiner can normally be reached on Mon-Thurs 6:00-6:30.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven O. Douglas
Primary Examiner
Art Unit 3751

SD
2-7-05